

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John W. Richardson as Receiver for the Alisal Water Corporation to sell and transfer the water systems in Monterey County to Pajaro Sunny Mesa Community Service District.

Application 05-03-003
(filed March 4, 2005)

Application of JOHN W. RICHARDSON (ALISAL WATER CORPORATION), to sell and transfer the Moss Landing water system in Monterey County to Pajaro Sunny Mesa Community Service District.

Application 05-03-006
(filed March 4, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING TAKING
OFFICIAL NOTICE OF DISTRICT COURT ORDER,
AUTHORIZING THE FILING OF COMMENTS, AND CONTINUING
THE EVIDENTIARY HEARING**

By its request filed on March 14, 2006, the Receiver asks for official notice of the March 8, 2006, Order Re Pending Motions and Requests entered by the United States District Court for the Northern District of California (*United States of America v. Alisal Water Corporation et al.*, Case No. C97-20099). Evidence Code § 451(a) requires that judicial notice be taken of decisional law of the United States. Rule 73 of the Commission's Rules of Practice and Procedure permits official notice of matters that may be judicially noticed by the courts of California. Accordingly, official notice is properly taken of the District Court's March 8, 2006 order.

The draft decision that mailed in this proceeding on December 19, 2005, defers to the District Court on certain issues (e.g., divestiture order and sale price) on the basis of *res judicata*. The draft decision undertakes to resolve the issue of payment responsibility for certain costs on the premise that it was not adjudicated by the District Court, and the March 7, 2006, joint modified scoping ruling of the Assigned Commissioner and Administrative Law Judge sets aside submission of the record to take further evidence on this issue.

However, the District Court's March 8 order indicates that the issue of payment responsibility for all expenses associated with the operation of the small water systems has been or will be adjudicated by that court. The March 8 order describes how, pursuant to the District Court's April 9, 2002, and June 26, 2002, orders appointing the Receiver, the Receiver files with the District Court periodic status reports setting forth expenses incurred during specified time periods of the receivership after Pajaro Sunny Mesa Community Services District (PSMCSD) assumed operational control of the systems, followed by *ex parte* applications for the District Court's order authorizing payment of the expenses set forth in the particular report.

The District Court's March 8 order notes that Alisal declined to challenge the reports covering the periods through May 31, 2005. (Order at p. 3.) With respect to Alisal's challenge to the expenses identified in the status reports covering the periods June 1, 2005, through December 31, 2005, the District Court agreed with Alisal's argument that, once PSMCSD assumed operational control of the systems, it also assumed responsibility for paying normal operating expenses, "with the caveat that if a particular expense became necessary as a result of [Alisal's] neglect of the water systems, such expense is chargeable to

[Alisal] even if the expense otherwise properly would be deemed an operational expense.” The District Court concluded as follows:

In summary, the Court concludes that Defendants are responsible for payment of *all* expenses set forth in the October 2005, December 2005 and January 2006 status reports [covering the periods June 1, 2005, through December 31, 2005], *except* normal operating expenses incurred after the purchasers took over actual operation of the systems. The problem, of course, lies in determining which expenses belong in which box. The Court cannot make this determination based upon the record before it, because Defendants have failed to identify specific expenses that have been inappropriately charged to them within the framework set forth above. Accordingly, the Court will grant the Receiver’s applications for payment of all the expenses set forth in the October 2005, December 2005 and January status reports, without prejudice to Defendants’ right to submit an itemization of any normal operating expenses incurred by the small water systems subsequent to the transfer of operations. (Order at p. 5, emphases in the original.)

On the basis of this officially noticed information, I intend to revise the December 19, 2005 draft decision:

- to find that the issue of cost responsibility for charges incurred after the small water systems were placed in receivership, including after PSMCSD assumed operational responsibility, has been or will be adjudicated by the District Court,
- to conclude, on the basis of *res judicata* and in the interest of judicial and administrative economy, that the Commission should defer the District Court’s adjudication of this issue, and
- to eliminate the order conditioning the transfer of on the Receiver’s proof of payment of the specified charges (other than Public Utilities Reimbursement Account fees) and remittance of Department of Health Services surcharges to Alisal.

Parties may comment, by no later than April 6, 2006, on this proposal and on the effect of the District Court's March 8, 2006 order, and the District Court's adjudication of payment responsibilities as described in the order, on the Commission's legal authority and responsibility to adjudicate the issue of payment responsibility for operational charges incurred after PSCMCSD assumed operational responsibility for the small water systems. Comments must be strictly limited to this issue; argument on other issues will be accorded no weight.

In order to accommodate this comment opportunity, I will continue until further notice the evidentiary hearing originally set for March 29, 2006, and the date for serving notice of witnesses and proposed evidentiary exhibits originally set for March 22, 2006. If the comments confirm my intent, the evidentiary hearing will be taken off calendar and this matter will be submitted.

IT IS RULED that:

1. Official notice is taken of the March 8, 2006, Order Re Pending Motions and Requests, entered by the United States District Court for the Northern District of California in *United States of America v. Alisal Water Corporation et al.*, Case No. C97-20099.
2. Parties may file comments by no later April 6, 2006, as set forth in this ruling.
3. The evidentiary hearing originally set for March 29, 2006, and the date for serving notice of proposed evidentiary exhibits originally set for March 22, 2006, are continued until further notice.

Dated March 20, 2006, at San Francisco, California.

/s/ HALLIE YACKNIN

A.05-03-003, A.05-03-006 HSY/sid

Hallie Yacknin
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Taking Official Notice of District Court Order, Authorizing the Filing of Comments, and Continuing The Evidentiary Hearing on all parties of record in this proceeding or their attorneys of record.

Dated March 20, 2006, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

A.05-03-003, A.05-03-006 HSY/sid

TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.